

Buffalo Police Department Body-Worn Camera Policy Critique

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Organizational Assessment and Accountability ADS 730A

### **Buffalo Police Department Body-Worn Camera Policy**

It is fair to say that technology is continuously evolving and impacting the world. In the world of criminal justice and community policing, this is no different as police departments adapt to new available policing tools. This paper will evaluate the 2019 Buffalo Police Department Body-Worn Camera Policy. The evaluation will include body-worn camera history, policy relation to accountability, related legislation, and policies, the usefulness of the program, and policy impact. This paper will also include recommendations for more effective policy implementation.

The Buffalo Police Department Body-Worn Camera Policy was put into practice in early 2019. The policy indicates seven reasons for equipping Buffalo police officers with both audio and video recording devices. The reasons listed include documentation of interactions between the public and police, evidence of a crime in progress that will be maintained for the court, to document the response of police during criminal investigations, the discovery of evidence and public calls for service. Other purposes of the Buffalo Police Department Body-Worn Camera Policy also include transparency and improving community relations, officer training, to reduce and alleviate confrontational interactions between the public and police and better resolve complaints against officers (Buffalo Police Department, n.d).

#### **History of the Policy**

The use of police-video recording dates to as early as the 1930s according to Seth Stoughton (2018), as he cites a September 1939 newspaper article titled “Movie Camera in Police Car Puts Evidence on Flim.” In the early 1960s, Connecticut State Police installed the first operational videotape recording system in a patrol car. According to William Albright (n.d.), the method used in the 1960s required the use of the entire passenger front seat and the back seat to

hold all the cumbersome recorder, cables, tripod and related equipment. By 2003, the in-car camera system has become quite popular across police departments in the United States with 72% or 17,500 state patrol vehicles being equipped with such technology. This in-car camera system was identified as a multifaceted tool for ensuring integrity and accountability all while enhancing public trust (Albright, n.d.).

### **Accountability**

Policy body camera as an accountability tool is the possibility that as officers wear the cameras, their conduct and behavior will improve, but capturing the good and bad (Coudert, Butin & Le Métayer, 2015). Furthermore, citizens behavior and actions towards officers will also be influenced by the recorded activity. A 2012 study of the Rialto Police Department in California showed almost a 88% drop in citizen complaint after the implementation of police-worn body cameras. The study also revealed about a 60% drop in use of force by officers wearing body cameras (Ramirez, 2014). Using a technology such as body cameras in police departments reflect some of the seven pillars of accountability Greg Bustin (2014), describes in *Accountability: The key to driving a high-performance culture*. A transparent and accountable culture is reflected in the organization clearly defined communications such as a policy that does what is right for the constituency even with the possibility of increased scrutiny on the police department. These police body camera policy shows willingness for the department to learn, train and educate officer and the public as one of the purposes of the policy is training. The Buffalo police department is building a reputation of valuing behaviors that match their values, addressing underperformance and embracing positive achievement, and as organizations continue to evolve and adapt their practices to reflect the changing world of accountability and transparency.

Incidents such as the 1991 Rodney King police beating, 2014 police shooting of Michael Brown and the 2019 fatal shooting of Willie McCoy by a police officer has created an outcry for greater police accountability. Community members, police departments and politicians are adopting and implementing body camera programs and policies to addressing this police-community relation and accountability issue. Currently, all 50 states and the District of Columbia has a plan or legislation on police body-worn cameras (LaVigne, Ulle & Erondou, 2018). Some cities such a Buffalo, New York has also implemented police body-worn camera policies. In January 2019 the final version of Buffalo Police Department Body-Won Cameras Policy was made available to the public after a 6-month pilot program and community meetings to review the policy draft according to the WKBW article “Buffalo police department releases body camera policy” (2019) and Mike Baggerman (2018).

### **Policy Critique**

#### **Strengths**

The Buffalo Police Department Body-Worn Camera Policy is a well-written policy which follows best practices as implemented by other police departments. The policy contains seven sections labeled I. Purpose, II. Definitions, III. Policy and Procedures, IV. BWC Video Retention, V. BWC Access, VI. Agency Administrator Responsibilities and, VII. Enforcement (Buffalo Police Department. (n.d.). A policy such as this is deemed useful and supported by authors such as Hyatt, Mitchell, and Ariel (2017, ) who states that body-worn camera (BWC) are providing footage from the perspective of the officer and providing the elements of a story before an encounter as escalated. The difference between a police body-worn camera and a citizen video according to Hyatt et al. (2017), is that most citizen footage shows the incident after the incident has entered a combative level. As noted by Hyatt et al. (2017), ensuring the footage

is being recorded from the beginning of the interaction is essential for accountability. The Buffalo Police Department Body-Worn Camera Policy does not clearly state when officers should engage their recording device. The policy states in what situation the device should be activated but does not indicate when, such as an upon arrival at the scene. The San Jose Police Body Worn Camera Policy has more specific wording that the Buffalo Police Department may benefit from implementing in their policy. “Officers shall make every reasonable effort to activate the body-worn camera prior to initiating, or as soon as practicable after initiating, the following police actions” (San Jose Police Department Body Camera Policy. n.d.). The policy and procedures related to activation and deactivation of the Buffalo Police Department BWC policy are in line with other best practices. The American Civil Liberties Union and the Police Executive Research Forum outline some best practices according to Stanley (2013), including activation the camera for interactions with the public on any service call and only deactivation the camera after the interaction as ease or stabilized.

Other concerns around activation of the body-worn camera being at the discretion of the officer are the possibility of loss of accountability. Research shows that allowing officers to have complete discretionary control over the activation and deactivation of their body-worn camera has about a 70% higher use of force rate than officers that cameras stayed on their entire shift. When the officer did not determine discretion on activation of the camera, the use of force was decreased by about 37% (Ariel, Sutherland, Young, & Sosinski, 2017). Contradictory to the above findings is the reason for this contradiction is that most studies were only studying the immediate impact of body cameras, not the long-term outcomes.

Another critical component of the usefulness of this policy is the section BWC video retention. Buffalo Police Department (n.d), BWC policy indicated that all videos would be kept

for a minimum of six months. If a video is determined to be evidentiary, it will be maintained until litigation eases, internal affair related videos will be kept indefinitely, and civilian complaint videos that are resolved will be kept for five years from the date of the incident. In terms of accountability, it is vital to having a timeframe such as described above that retain videos long enough to maintaining access but is cost conscious. Storage cost of footage can add up quickly in both costs for storage via servers or cloud-base space and volume of data according to Joh (2016). The Buffalo Police Department (n.d.), indicate that flagging of a video as evidence can be done by a civilian complaint, the responding officer, supervisor, district attorney or internal affairs. The use of flagging and retention time frame are both following best practices outlined by Stanley (2013).

Another problem area with this policy is the fine line between accountability and expectation of privacy. If police officers were to record with their body camera continuously, police accountability would be attained, but it would reduce the citizen level of expected privacy. Certain crime victims such as domestic violence victims, crime witnesses, victims of rape and abuse, sensitive crimes and crime involving minors are expected a higher level of privacy, and not subject to police recordings according to the Stanley (2015). Furthermore, both the Buffalo Police Department (n.d.), body-worn camera policy and the San Jose Police Department Body Camera Policy. (n.d.), built upon and exceeded the level of privacy expected for special populations and locations including hospital, locker rooms, bathroom, mental health, and medical health facilities, and police stations. San Jose's policy also includes other areas of privacy including strips searches, tactical briefing, and lawyers' officer (San Jose Police Department Body Camera Policy, n.d.). Utah, Tennessee, Kentucky, and Washington have all

pass similar laws protecting vulnerable individual and locations like Buffalo Police Department and San Jose (Erondu, 2018).

Nkechi Erondu (2018), identifies five trends in policy body camera legislation that continues the conversation on privacy. Erondu points out that no nationwide standard policy or practice determining if footage collected by officers is public record. The states of Michigan and Washington have passed bills exempting collected footage from being deemed public records. Buffalo Police Department (n.d.), determining that footage can be obtained using a FOIL request accompanied by a proper rationale for the application. The exception to the FOIL request including when the footage is evidence in legal or criminal investigations.

### **Problems**

There are two resounding areas of concern with the Buffalo Police Department body-worn camera policy including cost and storage. Both of these concerns go hand in hand as they represent a cause and effect relationship. As more data is collected and stored, more space is required, increasing the cost of the program. Josh Sanburn (2016), a Time columnist has indicated that the next big challenge for police is storing the body camera data. Some police departments according to Sanburn (2016), are generating more than 10,000 hours of footage each week and are reliant on the private sector or cloud-based services for storage. Jason Kotowski (2016), reiterates the sentiments of Sanburn, noting that data storage cost about \$100 per month per camera. According to Sarah Wooton (2017), of the Partnership for the Public Good, the Buffalo Police Department employs 708 sworn officers. If each officer were equipped with a camera, the estimated cost for data storage for the year would be about \$849,600. The fee does not include the price of the additional cameras or camera maintenance. \$849,600 for data storage that is reflective of about 4.4 officer's salary, as the annual base pay of a Buffalo police officer is

\$75,000. According to the Partnership for the Public Good the Buffalo Police Department 2017-2018 fiscal year budget is \$131 million, and the cost of storage would significantly impact the budget (Wooton, 2017).

### **Recommendations**

The sustainability of the cost of the policy is of great concern as other police departments across the country has ease using body camera program due to cost (Lockhart, 2019). Police departments including East Dundee of Chicago, Wahoo of Nebraska, and Madison of Wisconsin as all canceled their body camera wearing program citing storage cost as the mitigating factor (Kindy, 2019). The Buffalo Police Department (n.d), body-worn camera program did not discuss the overall estimated cost of the program in the policy. The written policy only indicating that the data would use cloud-based storage. Research shows police departments such as Buffalo, has to be able to sustain their body camera programs on their own. According to Kindy (2019), the available grants, "Cover only the initial equipment purchase, not ongoing storage fees...the grants are meant to foster novel and innovative practices that become self-sustaining" (para. 16). The cost associated with implementing a body camera program is also affecting the number of personnel needed to operate the department such as to review footage. According to Kimberly Kindy (2019), the impact is spreading to the prosecutor's offices, which is estimating needing to, "Hire 101 assistant commonwealth's attorneys and 57 paralegal and administrative positions to keep up with the extra work" (para. 26).

Senior Policy Analyst at the ACLU, Jay Stanley (2013) has recommended that if continuously recording of an officer while on duty is not an option, an automatic trigger should be implemented. This automatic trigger would remove the discretion of when to tape, out of the hands of the officer to maintain accountability and transparency. The automatic trigger would



start recording after certain types of movement or detection of a raised voice. Some actions may include, removing a weapon from the holster, the officer running or patrol car accelerating over a specific speed, or when multiple body cameras are located nearby. Austin Police Department has already fit 658 of their officers with an automatic trigger body camera device (McGlinchy, 2018). The cost difference of this kind of equipment was not available in the writer's research, but the overall impact of transparency, accountability and improved relationship with the community is worth the additional cost. As noted earlier in this paper, in some instance after three years, departments were returning to pre-body-worn camera implementation levels. Using an automatically triggered device will remove some of the complacency exhibited by officers and maintain accountability of the departments.

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